

Regular Session, 2008

ACT No. 898

HOUSE BILL NO. 1305

BY REPRESENTATIVE DOWNS

1 AN ACT

2 To amend and reenact R.S. 40:1472.2(6), (14), (19), (25), and (26), 1472.3(A), (B), (C), (D),
3 and (E), 1472.5(B), (C), and (E), 1472.6(A), and 1472.7(A) and to enact R.S.
4 40:1472.2(28), relative to the issuance of explosive licenses; to increase fees for the
5 issuance of explosives licenses; to create an additional class of explosives license;
6 to provide for more stringent requirements for explosives licenses; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:1472.2(6), (14), (19), (25), and (26), 1472.3(A), (B), (C), (D), and
10 (E), 1472.5(B), (C), and (E), 1472.6(A), and 1472.7(A) are hereby amended and reenacted
11 and R.S. 40:1472.2(28) is hereby enacted to read as follows:

12 §1472.2. Definitions

13 The following words used in this Part shall have the meanings respectively
14 ascribed to them in this Section, including singular as follows:

15 * * *

16 (6) "~~Dealer~~ Dealer-distributor" means a person engaged in the wholesale or
17 retail business of buying and selling or distribution of explosives, provided that
18 should a ~~manufacturer-distributor~~ manufacturer make sales to users, such
19 manufacturer shall not be required to obtain an additional license as a dealer.

20 * * *

21 (14) "~~Manufacturer-distributor~~ Manufacturer" means a person engaged in the
22 manufacture, compounding, or combining, ~~or distribution~~ of explosives.

23 * * *

(19) "Primary licensee" is the responsible party holding a valid ~~manufacturer-distributor~~ manufacturer, dealer ~~dealer-distributor~~, or user license.

* * *

(25) "Unauthorized persons" means those persons not employed by the licensed company or authorized by the licensed ~~manufacturer-distributor~~ manufacturer, dealer ~~dealer-distributor~~, or user.

(26) "User" means a person who, as an ultimate consumer of an explosive, purchases the same from a ~~dealer~~ dealer-distributor or ~~manufacturer-distributor~~ manufacturer or means a dealer or manufacturer who uses an explosive as an ultimate consumer.

* * *

(28) "Handler" shall mean a person who touches, moves, or otherwise handles explosives but does not detonate or otherwise effect the explosion of explosives or explosives materials. The license issued to a handler shall not be used by a blaster or user who uses explosives as an ultimate consumer.

§1472.3. License; ~~manufacturer-distributor~~ manufacturer, dealer ~~dealer-distributor~~, user, ~~or blaster, or handler~~ of explosives

A.(1) It shall be unlawful for any person or business ~~to engage in the business of a manufacturer-distributor or dealer in explosives~~ or to acquire, sell, possess, store, ~~or engage in the use of,~~ or otherwise handle explosives in this state, except in conformity with the provisions of this Part. Each ~~manufacturer-distributor~~ manufacturer, dealer ~~dealer-distributor~~, user, ~~or blaster, or handler~~, as such words are defined in R.S. 40:1472.2, shall possess a valid and subsisting license issued by the deputy secretary.

(2) Any person ~~operating as a blaster, as defined in this Part,~~ who is solely engaged in the initiation of fireworks for public display and holds a valid pyrotechnic operator license or a pyrotechnic special effects operator license issued by the state fire marshal in accordance with R.S. 51:650 et seq. shall not be required to obtain a blaster's license issued pursuant to this Part.

(3) License holders shall be required to receive additional training as prescribed by the deputy secretary who shall approve all courses of instruction and all instructors of such courses in accordance with regulations adopted pursuant to this Part.

B. Each ~~manufacturer-distributor~~ manufacturer, dealer ~~dealer-distributor~~, and user maintaining a Type 1, Type 2, Type 4, or Type 5 storage magazine as defined by regulations promulgated pursuant to this Part shall possess an additional license, as herein set forth, for each magazine. Type 3 portable magazines or "day boxes" used for taking detonators and other explosives from storage magazines to the blasting area are exempt from the licensing and location reporting requirements of this Subsection. The department shall assign to each magazine licensed pursuant to this Part a license number which shall be posted on the magazine in a manner prescribed by the department. ~~Locations~~ The exact location of such magazines shall be ~~exactly~~ reported to the deputy secretary in the application for such license. Any change in such magazine locations shall be reported to the Department of Public Safety and Corrections, explosives control unit, in advance of the actual change in a manner prescribed by the department. Written notice of such location change shall be filed with the Department of Public Safety and Corrections, explosives control unit and the deputy secretary, not later than seven ~~working~~ calendar days after such change is effected. ~~Type 3 portable magazines or "day boxes" used for taking detonators and other explosives from storage magazines to the blasting area are exempt from the licensing and location reporting requirements of this Subsection.~~

C.(1) Licenses shall be required for the following and the fees therefor are as follows:

		<u>1 yr.</u>	<u>2 yr.</u>	<u>3 yr.</u>
(a) Manufacturer-distributor <u>Manufacturer</u>	\$100.00	<u>\$200</u>	<u>\$400</u>	<u>\$550</u>
(b) Dealer <u>Dealer-distributor</u>	\$100.00	<u>\$200</u>	<u>\$400</u>	<u>\$550</u>
(c) User	\$30.00	<u>\$100</u>	<u>\$200</u>	<u>\$250</u>
(d) Magazine	\$20.00	<u>\$50</u>	<u>*</u>	<u>*</u>
(e) Blaster	\$20.00	<u>\$50</u>	<u>\$125</u>	<u>\$200</u>

<u>(f) Handler</u>	<u>\$50</u>	<u>\$100</u>	<u>\$125</u>
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(2) License holders may renew their licenses ninety days prior to expiration.

The department shall notify license holders of the expiration of their licenses at least sixty days prior to expiration.

~~(2)~~ (3) The nonrefundable fees in Paragraph (1) of this Subsection shall be submitted with the license application but shall not apply to Type 3 Magazines.

D. ~~Said~~ Such licenses shall be issued by the deputy secretary for ~~one~~ calendar year beginning with a period not to exceed three years from the date of ~~issue~~ issuance, excluding magazines which shall be licensed solely on an annual basis.

E.(1) The forms of such licenses and applications ~~therefor~~ shall be prescribed by the deputy secretary and shall require a photo and fingerprint of the applicant as well as such other information and data as the deputy secretary deems appropriate. ~~No license shall be issued to a convicted felon.~~

(2) To qualify for a license, an applicant shall:

(a) Make sworn application to the department. The providing of false or misleading information in the application or any documents submitted with the application shall be grounds for the denial or revocation of a license and shall subject the applicant to criminal prosecution. Any license holder under this Section shall notify the department of any name or address change within thirty days of the change. Failure to timely notify the department of a name or address change may result in suspension of the license for up to thirty days.

(b) Agree in writing to hold harmless and indemnify the department, the state, or any peace officer for any and all liability arising out of the issuance or use of a license issued pursuant to this Part.

(c) Be twenty-one years of age or older.

(d) Not suffer from a mental or physical infirmity due to disease, illness, or
retardation which prevents the safe handling of explosives.

(e) Not be ineligible to possess an explosives license by virtue of having
been convicted of a felony.

1 (f) Not have been committed, either voluntarily or involuntarily, for the
2 abuse of a controlled dangerous substance, as defined by R.S. 40:961 and 964, or
3 been found guilty of or entered a plea of guilty or nolo contendere to a misdemeanor
4 under the laws of this state or similar laws of any other state relating to a controlled
5 dangerous substance within a five-year period immediately preceding the date on
6 which the application is submitted, or be presently charged under indictment or a bill
7 of information for such an offense.

8 (g) Not have entered a plea of guilty or nolo contendere to or been found
9 guilty of a crime of violence as defined in R.S. 14:2 at the misdemeanor level, unless
10 five years have elapsed since completion of sentence or any other conditions set by
11 the court have been fulfilled, or unless the conviction was set aside and the
12 prosecution dismissed prior to the date on which the application is submitted.

13 (h) Not have been convicted of, have entered a plea of guilty or nolo
14 contendere to, or not be charged under indictment or a bill of information for any
15 crime of violence or any crime punishable by imprisonment for a term of one year
16 or greater. A conviction, plea of guilty, or plea of nolo contendere for the purposes
17 of this Paragraph shall include a dismissal and conviction set aside under the
18 provisions of Code of Criminal Procedure Article 893.

19 (i) Not be a fugitive from justice.

20 (j) Not be a person whose prior activities, arrest or arrests, criminal record,
21 reputation, habits, and associations pose a threat to public safety.

22 (k) Not be an unlawful user of or addicted to marijuana, depressants,
23 stimulants, or narcotic drugs.

24 (l) Not have been adjudicated to be mentally deficient or been committed to
25 a mental institution.

26 (m) Be a legal resident of the United States.

27 (n) Not have been discharged from the Armed Forces of the United States
28 with a discharge characterized as "Under Other than Honorable Conditions", a "Bad
29 Conduct Discharge", or a "Dishonorable Discharge". In the case of commissioned
30 officers and warrant officers of the United States Armed Forces, the punishment of

1 "Dismissal" rendered subject to a verdict of "guilty" at a trial by military court-
2 martial is deemed to be disqualifying under this Paragraph. For the purposes of this
3 Subparagraph, the United States Coast Guard is considered an armed force.

4 (o) Not have a history of engaging in violent behavior. There shall be a
5 rebuttable presumption that an applicant has a history of engaging in violent behavior
6 upon proof that, within a ten-year period immediately preceding the date of the
7 application, the applicant has been arrested or charged on three or more occasions
8 for any crime of violence as defined in R.S. 14:2(B), or has been arrested or charged
9 on two or more occasions for any crime of violence that may be punished by death.

10 (3)(a) The deputy secretary shall revoke the license if at any time during the
11 license period the license holder fails to satisfy any one of the qualification
12 requirements provided for in Paragraph (2) of this Subsection.

13 (b) The department shall execute a thorough background investigation,
14 including a criminal history check, of every applicant for the purpose of verifying
15 the qualifications of the applicant pursuant to the requirements of this Section. For
16 purposes of this Subparagraph, a background check shall be defined as a computer
17 check of available online state records, as well as national records including but not
18 limited to the federal Interstate Identification Index and fingerprints which shall be
19 forwarded to the Federal Bureau of Investigation for a national identification and
20 criminal history records check.

21 (4)(a) Anyone who handles, moves, uses, manipulates, or otherwise
22 detonates explosives and does so with a blood alcohol concentration of .02 percent
23 or greater by weight of alcohol in the blood or when a blood or urine test confirms
24 the presence of any abused or controlled substance that has been prescribed by a
25 licensed medical practitioner shall constitute a violation of Careless Use of
26 Explosives as found in R.S. 40:1472.18 and shall be cause for the immediate
27 suspension of the person's explosive license issued pursuant to this Chapter.

28 (b) Anyone who handles, moves, uses, manipulates, or otherwise detonates
29 explosives and does so with a blood alcohol concentration of .08 percent or greater
30 by weight of alcohol in the blood or when a blood or urine test confirms the presence

1 of any abused or controlled dangerous substance that was not prescribed by a
2 licensed medical practitioner shall constitute a violation of Reckless Use of
3 Explosives as found in R.S. 40:1472.19 and shall be cause for the person's explosives
4 license issued pursuant to this Chapter to be revoked for life.

5 (5) The tested license holder may have a physician or a qualified technician,
6 chemist, registered nurse, or other qualified person of his own choosing administer
7 a chemical test or tests in addition to any administered at the direction of a law
8 enforcement officer. The license holder shall be given the opportunity to telephone
9 and request the qualified person to administer such test.

10 * * *

11 §1472.5. Maintenance of records; inspection; notice of sale or delivery

12 * * *

13 B. ~~Manufacturer-distributors~~ Manufacturers and ~~dealers~~ dealer-distributors
14 shall keep accurate accounts of all inventories and sales of explosives.

15 C. All such sales shall be evidenced by an "Explosive Bill of Sale". The
16 ~~manufacturer-distributor~~ manufacturer or ~~dealer~~ dealer-distributor shall retain the
17 original and shall provide one copy to the purchaser, one copy to the deputy
18 secretary, and one copy to the explosives control unit. Such bills of sale so delivered
19 to purchasers shall bear the name of the manufacturer or ~~dealer~~ dealer-distributor and
20 the purchaser, date of sale, quantity sold, use for which the explosive is purchased,
21 the address of the purchaser, and the date-shift code.

22 * * *

23 E. ~~Manufacturer-distributors~~ Manufacturers and ~~dealers~~ dealer-distributors
24 shall retain all records of inventories, invoices, sales tickets, and copies thereof and
25 shall make the same available to any peace officer of this state, and the deputy
26 secretary or his duly authorized representative at such intervals as the secretary shall
27 deem appropriate.

28 * * *

§1472.6. Sales authorized only to licensees

A. No ~~manufacturer-distributor~~ manufacturer or ~~dealer~~ dealer-distributor shall sell any explosive unless the purchaser thereof is duly licensed under the provisions of this Part and authorized to purchase same and the explosives are to be used by the purchaser for a purpose covered by the purchaser's license.

* * *

§1472.7. Reports of losses or thefts; illegal use or illegal possession

A. Any sheriff, police department, or peace officer of this state shall give immediate notice to the deputy secretary of any losses, thefts, illegal uses, or illegal possession of explosives within the purview of this Part, coming to his attention, and shall forward a copy of his final written report to the deputy secretary. Any ~~manufacturer-distributor, dealer, user, or blaster~~ manufacturer, dealer-distributor, user, blaster, or handler who knows that explosives in his possession have been lost, stolen, or otherwise misappropriated shall immediately notify the nearest sheriff's office or police department and the deputy secretary of such fact. In addition, each ~~manufacturer-distributor~~ manufacturer, ~~dealer~~ dealer-distributor, and user shall physically inspect all magazines at least one time every seven days to ensure security of the explosives.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____